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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of Amendment of Section 73 202(b), Table of Allotments, FM Broadcast Stations. (Chillicothe and Ashville, Ohio) To: The Commission	MM Docket No. 99-322 RM-9762

OPPOSITION TO APPLICATION FOR REVIEW

Clear Channel Broadcasting Licenses, Inc , a subsidiary of Clear Channel Communications, Inc. (together, "Clear Channel") and the licensee of WFCB(FM), Chillicothe, Ohio, by its attorneys, hereby opposes the Application for Review of the Media Bureau's *Memorandum Opinion and Order* in the above-captioned proceeding,[1] as filed on December 15, 2003 by Franklin Communications, Inc., North American Broadcasting Co., and WLCT Radio Incorporated (collectively, the "Joint Petitioners"). The Application for Review merely rehashes arguments that the Media Bureau has already properly rejected. It must be denied without delay.

In this proceeding, the Commission reallotted WFCB to Ashville, Ohio, as that community's first local service, finding that it would result in a preferential arrangement of allotments under the FM allotment priorities by providing Ashville with its first local service.[2] Subsequently, largely in response to Joint Petitioners' incessant claims that the Ashville proposal is only a "pitstop on the way to Columbus," the Commission on June 2, 2003 issued a Request

[1] *Chillicothe and Ashville, Ohio*, DA-03-3443 (rel Oct 31, 2003) ("*MO&O*")

[2] *Chillicothe and Ashville, Ohio*, 17 FCC Rcd 20418 (Med Bur 2002)

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for Supplemental Information,[3] which sought a showing from Clear Channel that Ashville is independent of Columbus, Ohio under the factors outlined in *Faye and Richard Tuck*.[4] After carefully considering the information submitted, the Media Bureau again ruled against the Joint Petitioners, finding that Ashville is independent of the Columbus Urbanized Area and rejecting other arguments advanced by the Joint Petitioners at the reconsideration stage.[5]

Despite the Media Bureau's well supported findings that Ashville is an independent community deserving of a first local service and that the Ashville allotment thus "represents a significant public interest benefit,"[6] the Joint Petitioners persist in opposing it. No longer pretending to dispute the Media Bureau's findings concerning Ashville, however, the Joint Petitioners instead recycle their argument that considering the issue of multiple ownership compliance in conjunction with the application to implement the allotment, rather than at the allotment stage itself, is "silly" in light of the multiple ownership rules adopted by the Commission in the recent biennial regulatory review.[7] Yet, it is reliance on this already refuted argument, not longstanding allotment policy, which smacks of silliness.

As Clear Channel has previously observed, and as the Media Bureau has confirmed, the Commission has consistently addressed multiple ownership compliance issues raised in an

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[3] *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 11230 (Med Bur 2003)

[4] *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988)

[5] *MO&O* at ¶7

[6] *Id.* at ¶4

[7] *In the Matter of 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620 (2003) ("*Ownership R&O*") The United States Court of Appeals for the Third Circuit stayed the effectiveness of the rules adopted by the Commission in the *Ownership R&O*. *Prometheus Radio Project v. FCC*, No. 03-3388 (3rd Cir. Sept. 3, 2003)

allotment proceeding in the context of the implementing application, not at the allotment stage [8] This policy is eminently reasonable and clearly defensible. At the allotment stage, the Commission has one task – to determine whether the proposed change in community of license will result in a preferential arrangement of allotments under its FM allotment priorities.[9] To complete this task properly, the Commission must focus on the distribution of local service and whether the subject community is deserving of such service [10] Possible noncompliance with the multiple ownership rules by a rulemaking proponent is irrelevant unless and until the Commission reaches a decision, as it has in the case of Ashville, that allotting a channel to a community serves the public interest To do otherwise is to put the proverbial cart before the horse [11]

Nothing in the *Ownership R&O* indicates that the Commission intends to depart from this policy, nor should it [12] Even if the Commission were to consider multiple ownership

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[8] *See MO&O* at ¶11 (citing *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 17 FCC Rcd 25055, 25059-60 (2002) ("*Detroit Lakes*") ("In order to achieve an efficient and orderly transaction of both the rulemaking process and the subsequent application process, any issue with respect to compliance with Section 73 3555 of the Rules will be considered in connection with the application to implement this reallotment "), *Letter from Peter H Doyle, Acting Chief, Audio Services Division, to Paul A Cicelski Esq et al*, File No BAPH-20001101ABD (May 24, 2001))

[9] *See Modification of FM and Television Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon granted in part*, 5 FCC Rcd 7094 (1990)

[10] As in previous pleadings, the Joint Petitioners inexplicably devote a substantial portion of the Application for Review to an exhaustive account of past Commission rules and regulations concerning a radio station's obligation to serve its local community and conclude that "the notion of 'local service' is a regulatory mirage " The Joint Petitioners also contend that the local radio ownership rule spelled out in the *Ownership R&O* has rendered the *Tuck* analysis obsolete However, the *Ownership R&O* contains nothing purporting to overrule the Commission's historical allotment policies, and the Joint Petitioners' attempt to revolutionize Commission policy is woefully out of place in the post-grant phase of a single allotment case

[11] There are practical, as well as legal, reasons for considering multiple ownership issues at a separate stage For instance, a rulemaking proponent may choose not to implement a change in community of license, perhaps because of financial or site location problems Moreover, even if the operation of the new allotment would raise multiple ownership compliance concerns, a proponent may address such concerns in a number of ways, including the divestiture of other owned stations

[12] *MO&O* at ¶11 ("[T]he Ownership Report and Order did not instruct the staff to revise this policy with respect to allotment proceedings ")

compliance at the allotment stage, however, the Ashville allotment would still pass muster, since Clear Channel complies with the multiple ownership rules currently in effect. The Joint Petitioners contend that the Commission's *Memorandum Opinion and Order* in *Shareholders of Hispanic Broadcasting Corporation* announces that, as a matter of Commission policy, the Media Bureau must effectively apply the "new" multiple ownership rules during the court-imposed stay [13] They are wrong Although the Commission may have chosen to impose conditions in anticipation of the effectiveness of the currently unenforceable "new" rules, in the context of a single extremely large, multiple market, hotly contested, and politically sensitive transaction, it did not, in any way, purport to establish a general or future policy for processing applications The Media Bureau, however, has announced a clear policy concerning the application of the "new" rules while the stay is in effect. As stated in a general Public Notice on September 10, 2003, the policy is that "[a]pplicants are not required to demonstrate compliance with the ownership rules adopted in the Report and Order "[14]

[13] The Commission approved the proposed merger of Hispanic Broadcasting Corporation and Univision on the condition that the newly-merged firm divest certain radio stations within six months, in the "event that the stay pending appeal in Prometheus Radio Project v Federal Communications Commission, No 03-3388 (3d Cir Sept 3, 2003) (per curiam) is lifted or the local radio ownership rules adopted in the 2002 Biennial Review Order otherwise go into effect " *Shareholders of Hispanic Broadcasting Corporation*, FCC 03-218, at ¶11 (rel Sept 22, 2003)

[14] Public Notice DA 03-2867 (Sept 10, 2003)

CONCLUSION

Nothing in the Joint Petitioners' Application for Review warrants undoing the Commission's reallotment of Channel 227B to Ashville It must be denied.

Respectfully submitted,

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Dated. December 30, 2003

CERTIFICATE OF SERVICE

I, Gina Stuart, a secretary in the law firm of Wiley Rein & Fielding LLP do hereby certify that I have on this 30th day of December 2003 caused a copy of the foregoing "Opposition to Application for Review" to be served by first class mail, postage prepaid, upon the following:

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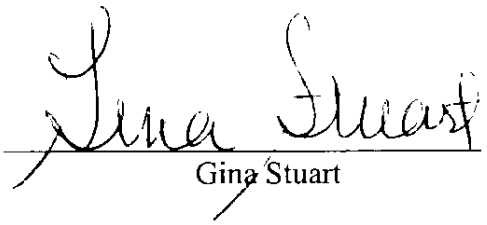

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